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11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **WESTERN DIVISION**

15 DOMENICO D’CARPIO, Individually
16 and On Behalf of all Others Similarly
17 Situated,

18 Plaintiffs,

19 v.

20 SELDAT, INC.,

21 Defendants.

Case No.:

**COLLECTIVE AND CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

I. INTRODUCTION

1. Plaintiff Domenico D’Carpio (“Plaintiff”) brings this case as a collective action under the Federal Fair Labor Standards Act and as a class action under Rule 23 of the Federal Rules of Civil Procedure. As set forth below, the plaintiff worked as a security guard for Defendant Seldat, Inc. (“Seldat”) at their Compton, California facility from July 2017 to June 2018.

2. While working as a security guard for Seldat, Plaintiff was improperly classified as an independent contractor, although the work he performed for Seldat was that of an employee both under the FLSA and the California Labor Code.

3. As a result of this misclassification, Plaintiff was unlawfully deprived of overtime pay; was deprived of meal and rest breaks in violation of Cal. Lab. Code §§ 226.7 and 512; was not given proper wage statements in violation of Cal. Lab. Code §226(a).

4. In addition, Plaintiff intends to assert claims under the Private Attorney General Act of California, when those claims are perfected.

5. Plaintiff brings his FLSA claims on behalf of a proposed collective of similarly situated security guards, classified as security guards and who worked for Seldat nationwide in the last three years who may opt in to this case under the Federal Fair Labor Standards Act (“FLSA”), 4 U.S.C. §§ 201 et seq. Seldat has violated the FLSA by failing to pay these individuals overtime compensation for hours worked in excess of 40 a week.

1 6. Plaintiff also brings his California state law claims under Rule 23 of the
2 Federal Rules of Civil Procedure on behalf of a proposed class of similarly situated
3 security guards who have worked for Seldat in California.
4

5 7. Seldat has violated the California Labor Code by (1) failing to pay
6 technicians minimum wage for all hours worked, and overtime compensation for
7 hours worked in excess of 40 a week; (2) depriving technicians of meal and rest
8 breaks; (3) taking improper deductions from the technicians' pay; (4) improperly
9 forcing technicians to bear expenses related to their work for Seldat; and (5) failing
10 to provide the security guards with accurate wage statements.
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13 **II. JURISDICTION AND VENUE**

14 8. The jurisdiction of this court is invoked pursuant to 29 U.S.C. §1331
15 because Plaintiff has brought claims under the Federal Fair Labor Standards Act.
16 The court also has supplemental jurisdiction over the state law claims pursuant to 28
17 U.S.C. § 1367.
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20 9. Venue is properly in the Central District of California, Western
21 Division in that the defendant maintains a facility in Compton, California where the
22 plaintiff worked.
23

24 **III. PARTIES**

25 10. Plaintiff Domenico D'Carpio ("Plaintiff") is an adult resident of Los
26 Angeles, California, residing in Bellflower, California.
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1 11. Seldat, Inc. (“Defendant” or “Seldat”) is a self-described “supply
2 chain” company with its headquarters in the state of New Jersey, which maintains
3 work locations and offices in several communities in the state of California
4 including Compton, California.
5

6 **IV. CLASS AND COLLECTIVE ALLEGATIONS**
7

8 12. Plaintiff brings this action as a collective action under §216(b) of the
9 Federal Fair Labor Standards Act, 29 U.S.C. §201 et seq. (“FLSA”), and as a class
10 action under Rule 23 of the Federal Rules of Civil Procedure.
11

12 13. The putative members of the proposed collective action under the
13 FLSA consists of all individuals who in the last three years worked directly for
14 Seldat as security guards and who were classified as independent contractors with
15 respect to their work within the United States (“FLSA Collective”).
16

17 14. Plaintiff also brings this case as a Rule 23 class action, on behalf of all
18 individuals who worked as independent contractors for Seldat within the state of
19 California (“California Class”).
20

21 15. The FLSA Collective and California Class are together referred to as
22 the “Classes.”
23

24 16. Plaintiff reserves the right to redefine and/or subdivide the Classes
25 prior to notice or class certification, and thereafter, as necessary.
26

27 17. It is appropriate to treat this action both as a collective action under
28 §216(b) and a class action under Rule 23, because Plaintiff and the Classes were

1 subject to the common practices and policies of being deprived of overtime, being
2 deprived of meal and rest breaks; and being deprived of accurate wage statements.
3
4 All security guards performed the same basic category of work, thus making class
5 treatment appropriate in both instances.

6 18. The claims of the named Plaintiff are representative and similar to the
7
8 claims of the proposed Classes, the named Plaintiff and his attorneys can adequately
9 protect the interests of the Classes and are not in conflict with any members of the
10 Classes.

11
12 19. The claims of the named Plaintiff are typical of the claims of the
13 Classes. Treating this action as a class and collective action would be far preferable
14 to permitting numerous individual actions. Further, since all of the
15 potential members of the Classes were subject to the same overarching violations of
16 law, namely being deprived of overtime and being deprived of accurate wage
17 statements, there are common issues of law that will predominate over
18 individualized issues.
19
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21 **V. STATEMENT OF FACTS**

22 20. In or about July 2017, Plaintiff was hired by Seldat to work as a
23 security guard at Seldat's facility at 1121 West Artesia Boulevard, Compton,
24 California. Plaintiff was classified by Seldat as an "independent contractor" despite
25 meeting the criteria to be an employee under both federal and California law.
26
27 Moreover, Seldat engaged and engages other security guards as so-called
28

1 “independent contractors” at the Compton, California facility and, according to
2 information and belief, at its other facilities in California and in the U.S. generally.

3
4 21. While Plaintiff worked as a security guard, he was expected to perform
5 according to the instructions and expectations established by Seldat. His work was
6 integral to the Seldat operation in which he worked. Seldat exercised substantial
7 control over the manner in which he performed his services and Seldat exercised all
8 necessary control over its operations as a whole, of which the security guards were
9 an integral part.
10

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12 22. Plaintiff and the Class typically worked for five (5) or more hours each
13 shift and were not provided with legally mandated meal breaks during their shifts
14 under California law.
15

16 23. Plaintiff and the Class typically worked longer than four (4) hours and
17 were not provided with legally mandated rest breaks during their shifts under
18 California law.
19

20 24. Plaintiff and the Class consistently worked over 8 hours a day and 40
21 hours a week, in each case without overtime pay.
22

23 25. Plaintiff and those members of the Class who no longer work for Seldat
24 were not paid all of their final wages when they separated from Seldat.

25 26. Plaintiff and the Class were not provided with legally compliant wages
26 statements semi-monthly as required under California law.
27
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1 **COUNT I**

2 **FEDERAL FAIR LABOR STANDARDS ACT**
3 **(Plaintiff and FLSA Collective)**

4 27. The actions of Seldat as set forth above constitute a willful violation of
5 the Federal Fair Labor Standards Act, 29 U.S.C. §§201 et seq, since Seldat
6 knowingly and deliberately improperly classified Plaintiff and other security guards
7 as independent contractors instead of employees, even though these individuals
8 clearly should be defined as employees based on the nature of their work and their
9 relationship to Seldat under the federal “economic realities test.” Thus, Seldat failed
10 to pay overtime of at the 1.5 times the regular rate of pay for every hour of work
11 beyond 40 hours per workweek. This claim is brought on behalf of a collective of
12 similarly situated individuals who have worked for Seldat throughout the United
13 States.
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18 **COUNT II**

19 **CALIFORNIA LABOR CODE §§ 510 AND 1194**
20 **(Plaintiff and California Class)**

21 28. The actions of Seldat as set forth above violate California Labor Code
22 §§510, 1194 which require an employer to compensate employees at one-and-a-half
23 times the employee’s regular rate of pay for all hours worked in excess of eight, up
24 to and including 12 hours in a workday, and for the first 8 hours worked on the
25 seventh consecutive day of work in a workweek, and double the employee’s regular
26 rate of pay for all hours worked in excess of 12 in a workday and for all hours
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1 worked in excess of 8 hours worked on the seventh consecutive day of work in a
2 workweek. Seldat failed to pay Plaintiff and other California “independent
3 contractor” technicians overtime at the appropriate rate required by Cal. Lab. Code
4 §510, since it had a policy of not paying the “independent contractor” technicians,
5 who were in fact employees of Seldat, overtime. Pursuant to Cal. Lab. Code §1194,
6 Plaintiff and other California “independent contractor” technicians are entitled to
7 recovery of unpaid overtime compensation, as well as attorneys’ fees and costs. This
8 claim is brought on behalf of a class of similarly situated individuals who have
9 worked for Seldat in California.
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13 **COUNT III**

14 **CALIFORNIA LABOR CODE §§ 226.7, 512** 15 **(Plaintiff and California Class)**

16 29. Seldat’s conduct, as set forth above, in misclassifying Plaintiff and
17 other California security guards as independent contractors, and failing to provide
18 them with meal and rest breaks during their workdays constitutes a violation of Cal.
19 Lab. Code §§ 226.7 and 512. Seldat was and is required to (but did not) provide a
20 meal period of at least 30 minutes for any shift over 5 hours, to be provided within
21 the first 5 hours; and a second meal period off at least 30 minutes for shifts over 10
22 hours. Seldat also was and is required to (but did not) provide rest breaks of no less
23 than 10 minutes for every 4 hours worked. This claim is brought on behalf of a class
24 of similarly situated individuals who have worked for Seldat in California.
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COUNT IV

**CALIFORNIA LABOR CODE § 203
(Plaintiff and California Class)**

30. Seldat's failure to pay wages due to Plaintiff and proposed class members as alleged above was willful in that Seldat knew wages were due but failed to pay them. Plaintiff and class members who no longer work for Seldat are entitled to penalties under Cal. Lab. Code § 203, which provides that, if an employer willfully fails to pay an employee all wages due within 72 hours of their termination, the employee's wages shall continue as a penalty until paid for a period of up to 30 days from the time they were due.

COUNT V

**CALIFORNIA LABOR CODE § 226(a)
(Plaintiff and California Class)**

31. The actions of Seldat as set forth above violate Section 226(a) of the California Labor Code, which provides that "[e]very employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees . . . an accurate itemized statement in writing showing . . . [the] total hours worked by the employee", "the number of piece-rate units earned", "all deductions" and "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee." Cal. Lab. Code §226(a). This claim is brought on behalf of a class of similarly situated individuals who have worked for Seldat in California. Seldat has knowingly and intentionally failed to

1 comply with Cal. Lab. Code § 226 because it has failed to provide to its
2 “independent contractor” technicians wage statements which accurately reflected
3 their piece rate and the number of piece rate units earned, in violation of § 226(a).
4 This claim is brought on behalf of a class of similarly situated individuals who have
5 worked for Seldat in California.
6

7 8 **COUNT VI**

9 **CAL. BUS. & PROF. CODE §17200, et seq.** 10 **(Plaintiff and California Class)**

11 32. Seldat’s conduct, as set forth above, violates the California Unfair
12 Competition Law, Cal. Bus. & Prof. Code § 17200 et seq. (“UCL”). Seldat’s
13 conduct constitutes unlawful business acts or practices, in that Seldat has violated
14 California Labor Code Sections 1194, 226.7 and 512. Pursuant to California
15 Business and Professions Code § 17203, Plaintiff and class members seek
16 declaratory and injunctive relief for Seldat’s unlawful conduct and to recover
17 restitution. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiff and
18 class members who worked for Seldat in California are entitled to recover
19 reasonable attorneys’ fees, costs, and expenses incurred in bringing this action.
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22 **VI. JURY DEMAND**

23 33. Plaintiff requests a trial by jury on all of his claims.
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25 **VII. PRAYER FOR RELIEF**

26 WHEREFORE Plaintiff requests that this Court enter the following relief:
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1 a. Certify a collective action pursuant to 29 U.S.C. 216(b) and authorize
2 the issuance of notice to similarly-situated individuals who work or worked as
3 security guards for Seldat during the past three years;

4
5 b. Certify a class action pursuant to Federal Rule of Civil Procedure 23
6 and appoint Plaintiff and his counsel to represent the class;

7
8 c. Declare and find Seldat violated Cal. Lab. Code §§ 1194, 226.7, 512,
9 203, 226 and Bus. & Prof. Code § 17200, et seq.;

10 d. Award compensatory damages, including all unpaid minimum and
11 overtime wages, expenses owed, deductions, and liquidated damages in an amount
12 according to proof;

13
14 e. Award liquidated damages under the FLSA;

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16 f. Award all interest, costs and attorney's fees incurred prosecuting this
17 claim;

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19 g. Enter injunctive relief in the form of an order directing Seldat to
20 comply with Cal. Lab. Code; and

21 h. Such other relief as in law or equity may pertain.
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1 Dated: January 8, 2019

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